

§ 12.204

17 CFR Ch. I (4–1–03 Edition)

be filed and served in accordance with § 12.10 of the Reparation Rules.

§ 12.204 Amended and supplemental pleadings.

(a) *Amendments to pleadings.* At any time before the parties have concluded their submission of proof, the Judgment Officer may allow amendments of the pleadings either upon written consent of the parties, or for good cause shown, provided however, that any pleading as amended shall not contain an allegation of damages in excess of \$30,000. Any party may file a response to a motion to amend the pleadings within ten (10) days after the date of service upon him of the motion;

(b) *Supplemental pleadings.* At any time before the parties have concluded their submissions of proof, and upon such terms as are just, the Judgment Officer may, upon motion by a party, permit a party to serve a supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleadings sought to be supplemented and which are relevant to any of the issues in the proceeding: *Provided However,* That any pleading as supplemented may not contain an allegation of damages in excess of \$30,000. Any party may file a response to a motion to supplement the pleadings within ten (10) days after the date of service upon him of the motion.

(c) *Pleadings to conform to the evidence.* When issues not raised by the pleadings but reasonably within the scope of a summary decisional proceeding are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.

[49 FR 6621, Feb. 22, 1984, as amended at 59 FR 9637, Mar. 1, 1994]

§ 12.205 Motions.

(a) *In general.* Motions for relief not otherwise specifically provided for in subpart D of these rules, other than discovery-related motions and motions for extensions of time and similar procedural orders, shall not be allowed. Except as otherwise specifically provided in these rules, all motions permitted under these rules shall be directed to the Judgment Officer prior to

the filing of the initial decision, and to the Commission after the initial decision has been filed. Motions for extensions of time and similar procedural orders may be acted upon at any time, without awaiting a response thereto. Any party adversely affected by such action may request reconsideration, vacation or modification of such action.

(b) *Answer to motions.* Any party may serve and file a written response to a motion within ten (10) days after service of the motion upon him, or within such longer or shorter period as is established by these rules, or as the Judgment Officer or the Commission may direct.

(c) *Dismissal—(1) By the Judgment Officer.* A Judgment Officer, acting upon his own motion, may

(i) Dismiss the entire proceeding without prejudice to counterclaims, if he finds that the matters alleged in the complaint fail to state a claim cognizable in reparations; or

(ii) Order dismissal of any claim, counterclaim, or party from the proceeding if he finds, after review of the record, that such claim or counterclaim (by itself or as applied to any party) is not cognizable in reparations.

(2) *Motion for dismissal by a party.* Any party who believes that grounds exist for dismissal of the entire complaint, or of any claim therein, or of any counterclaim or party from the proceeding, may file a motion for dismissal specifying the claims or parties to be dismissed and the reasons therefor. Upon consideration of the whole record, the Judgment Officer may grant or deny such motion, in whole or in part.

(3) *Content and effect of order of dismissal.* Any order of dismissal entered pursuant to this rule shall contain a brief statement of the findings and conclusions which serve as the basis for the order. An order of dismissal of the entire proceeding pursuant to this rule shall have the effect of an initial decision (see § 12.213(d)), and may be appealed to the Commission in accordance with the requirements of § 12.401 of these rules.

§ 12.206 Pre-decision conferences.

At any time after a summary decisional proceeding has been commenced pursuant to § 12.26(b), the Judgment Officer may, in his discretion, conduct one or more pre-decision conferences to be held in Washington, DC or by telephone, with all parties, for the purposes of:

- (a) Discussing the advisability of electing the voluntary decisional procedure;
- (b) Encouraging settlement of the entire case, or any part thereof, (such discussions may be *ex parte* with the consent of all parties);
- (c) Simplifying or clarifying issues;
- (d) Obtaining stipulations, admissions of fact and of authenticity of documents;
- (e) Discussing amendments or supplements to the pleadings;
- (f) Encouraging an early settlement of disputes relating to discovery; and
- (g) Discussing any matters of relevance in the proceeding.

At or following the conclusion of such a conference, the Judgment Officer may serve a pre-decision memorandum and order setting forth the agreements, if any, reached by the parties, any procedural determinations made by him, and the issues for resolution not disposed of by the admissions or agreements by the parties. Such order, when issued, shall control the subsequent course of the proceeding unless modified to prevent injustice.

§ 12.207 Summary disposition.

(a) *Filing of motions, answers.* Any party who believes that there is no genuine issue of material fact to be determined and that he is entitled to a decision as a matter of law concerning all issues of liability in the proceeding may file a motion for summary disposition at any time until the parties have concluded their submissions of proof. Any adverse party, within ten (10) days after service of the motion, may file and serve opposing papers or may countermove for summary disposition.

(b) *Supporting papers.* A motion for summary disposition shall include a statement of the material facts as to which the moving party contends there is no genuine issue, supported by the

pleadings, and by affidavits, other verified statements, admissions, stipulations, and interrogatories. The motion may also be supported by briefs containing points and authorities in support of the contention of the party making the motion. When a motion is made and supported as provided in this section, unless otherwise ordered by the Judgment Officer, an adverse party may not rest upon the mere allegations, but shall serve and file in response a statement setting forth those material facts as to which he contends a genuine issue exists, supported by affidavits and other verified material. He may also submit a brief of points and authorities.

(c) *Summary disposition upon motion of the Judgment Officer.* If the Judgment Officer believes that there may be no genuine issue of material fact to be determined and that one of the parties may be entitled to a decision as a matter of law, he may direct the parties to submit papers in support of and in opposition to summary disposition, substantially as provided in paragraphs (a) and (b) of this section.

(d) *Ruling on summary disposition.* The Judgment Officer may grant summary disposition if the undisputed pleaded facts, affidavits, other verified statements, admissions, stipulations, and matters of official notice show that (1) there is no genuine issue as to any material fact; (2) there is no necessity that further facts be developed in the record; and (3) a party is entitled to a decision in his favor as a matter of law.

(e) *Review of ruling; appeal.* An application for interlocutory review of an order denying a motion for summary disposition shall not be allowed. An order granting summary disposition as to all of the issues and all of the parties in the proceeding shall have the same effect as an initial decision (see § 12.210(d)), and may be appealed to the Commission, in accordance with § 12.401 of these rules.

§ 12.208 Submissions of proof.

(a) *Documentary evidence.* Each party may file and serve verified statements of fact and affidavits of non-party witnesses with personal knowledge of the facts which they aver to be true. Proof